

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

JOANN WRIGHT HAYSBERT)

Plaintiff,)

v.)

BLOOMIN' BRANDS, INC.,)

and)

OUTBACK STEAKHOUSE OF)

FLORIDA, LLC,)

Defendants.)

Case No.: 4:20-cv-00121-RBS-DEM

MEMORANDUM OF LAW

I. INTRODUCTION

THIS MATTER is scheduled to begin trial on March 14, 2023 and potentially conclude on March 20, 2023. The defendant's neurologist, a critical defense witness, regarding the plaintiff's claimed injuries has suffered a back condition which requires surgery and rehabilitation for up to a month. The surgery is scheduled March 3, 2023.

II. FACTS

This is a case in which plaintiff makes a claim for traumatic brain injury following a fall at an Outback Steakhouse. The defense has obtained an independent medical examination by Dr. Neil Pugach who is scheduled to testify at trial and upon whom a subpoena has been issued for his appearance. Dr. Pugach has suffered debilitating back pain which has necessitated surgery on his back scheduled March 3, 2023. The period of recovery is scheduled for one month which precludes his appearance in court. This unavailability was not anticipated by the defense and/or known to counsel for the defense.

III. ARGUMENT

A. The defense moves this court to grant a short continuance of the trial date so that Dr. Pugach can appear and testify in person.

The appearance of Dr. Pugach is critical to the defense and his ability to prepare and participate in the testimony is extremely limited due to his back condition. A short continuance will accommodate his medical condition as needed so that he can recuperate and appear in person. Therefore, the defendant respectfully moves the court to grant a short continuance of this matter because of the unanticipated and unexpected medical condition of Dr. Pugach.

B. Permit a de bene esse deposition of Dr. Pugach pre trial.

A second alternative is to allow for a de bene esse deposition of Dr. Pugach. A de bene esse deposition could be held on March 2, 2023.

C. Zoom testimony pursuant to Rule 43(a) of the Federal Rules of Civil Procedure. We have considered requesting zoom testimony during trial, but that has been ruled out by the treating physician.

D. Good Cause

A request in the delay of the trial date is based upon good cause. This is a medical condition of defendant's key witness and this unavailability was unanticipated at the time of scheduling the trial date. Dr. Pugach is quite disabled by the severe pain in his back and this request for delay is something that the defense reluctantly seeks.

WHEREFORE, the foregoing considered, Outback Steakhouse, by counsel, moves this court for entry of an Order continuing the trial date for a short period of time of a maximum of 30 days to allow Dr. Pugach to recover from his surgery and disability.

**BLOOMIN' BRANDS, INC.
and OUTBACK STEAKHOUSE
OF FLORIDA, LLC**
By Counsel

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2022 the following **Memorandum of Law** was e-filed and emailed to the following:

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